265 NLRB No. 111

D--9551 San Franciso, CA

#### UNITED STATES OF AMERICA

### BEFORE THE NATIONAL LABOR RELATIONS BOARD

AIRPORT DRAYAGE CO., A WHOLLY-OWNED SUBSIDIARY OF AIRPORT TRUCK REPAIR, INC.

and '

Case 20--CA--17118

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, DISTRICT LODGE NO. 190, LOCAL LODGE NO. 1414, AFL--CIO

### DECISION AND ORDER

Upon a charge filed on May 20, 1982, by International Association of Machinists and Aerospace Workers, District Lodge No. 190, Local Lodge No. 1414, AFL--CIO, herein called the Union, and duly served on Airport Drayage Co., a wholly-owned subsidiary of Airport Truck Repair, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 20, issued a complaint on June 24, 1982, and issued an amendment to complaint on August 18, 1982, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7)

of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that the Union is the exclusive representative of certain of Respondent's employees in a unit appropriate for the purposes of collective-bargaining within the meaning of Section 9(b) of the Act, 1 and that Respondent violated Sections 8(a)(1) and (5) and 8(d) of the Act by repudiating the current collective-bargaining agreement between the Union and Respondent, and unilaterally changing existing terms and conditions of employment of its employees in the appropriate unit by refusing to abide by the collective-bargaining agreement regarding payment of wage increases.

On September 30, 1982, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment.

Subsequently, on October 4, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent has not filed a response to the Notice To Show Cause.

<sup>1</sup> The unit, as stated in the complaint, is:

All employees employed in the job classifications listed in the collective-bargaining agreement effective June 1, 1980 through May 31, 1983, excluding all other employees, guards and supervisors as defined in the Act.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides in pertinent part:

The Respondent shall, within 10 days from the service of the complaint, file an answer thereto. . . All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed . . . shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint specifically states that unless an answer is filed within 10 days of service thereof, ''all of the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board.'' Respondent did not file an answer to the complaint. Further, according to the uncontroverted allegations of the Motion for Summary Judgment, the Regional Attorney notified Respondent by letter dated September 8, 1982, that no answer to the complaint, as amended, had been received, and advised Respondent that, if an answer was not received within 7 days, a Motion for Summary Judgment would be filed. Respondent has not filed an answer, nor has it requested an extension of time within which to do so. In view of Respondent's failure to file an answer or response to the Notice To Show Cause, and as no good cause has been shown therefor, the allegations of the

complaint are deemed to be admitted to be true and are so found by the Board, and, accordingly, the General Counsel's Motion for Summary Judgment is granted.

On the basis of the entire record, the Board makes the following:

## Findings of Fact

## I. The Business of Respondent

At all times material herein, Respondent, a California corporation with an office and place of business in San Francisco, California, herein called Respondent's facility, has been engaged in the transportation of freight and general commodities. During the calendar year ending December 31, 1981, Respondent in the course and conduct of its business operations described above derived gross revenues in excess of \$50,000 for the transportation of freight and commodities from the State of California directly to points outside the State of California.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

## II. The Labor Organization Involved

International Association of Machinists and Aerospace Workers, District Lodge No. 190, Local Lodge No. 1414, AFL--CIO, is a labor organization within the meaning of Section 2(5) of the Act.

D--9551

### III. The Unfair Labor Practices

# A. The Unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All employees employed in the job classifications listed in the collective-bargaining agreement effective June 1, 1980 through May 31, 1983, excluding all other employees, guards and supervisors as defined in the Act.

# B. The Representative Status of the Union

The Union is now, and has been at all material times, the exclusive bargaining representative of the employees in the above-described unit within the meaning of Section 9(a) of the Act and the Union has been recognized as such representative by Respondent. Such recognition has been embodied in successive collective-bargaining agreements between Respondent and the Union, the most recent of which is effective by its terms for the period June 1, 1980, through May 31, 1983.

# C. The Violations

Respondent has unilaterally changed existing terms and conditions of employment of its employees in the unit described above, by the following actions:

- Since on or about December 1, 1981, Respondent has refused to institute the wage increase scheduled for December 1, 1981, provided for in section V(c) of the collective-bargaining agreement described above.
- 2. On or about April 27, 1982, the Union, by letter, requested that Respondent implement said increase, and on or

about May 4, 1982 Respondent, by letter, reaffirmed its refusal to institute the December 1, 1981, wage increase, and repudiated its obligation to institute the wage increase scheduled for June 1, 1982, provided for in section V(c) of the collective-bargaining agreement between the parties.

Accordingly, we find that by the aforesaid conduct Respondent has failed and refused, and is now failing and refusing, to bargain collectively with the Union as the exclusive representative of its employees in the appropriate unit. By such conduct, Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Sections 8(a)(1) and (5) and 8(d) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce
The activities of Respondent set forth in section III,
above, occurring in connection with its operations described in
section I, above, have a close, intimate, and substantial
relationship to trade, traffic, and commerce among the several
States and tend to lead to labor disputes burdening and
obstructing commerce and the free flow of commerce.

## V. The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and take certain affirmative action to effectuate the policies of the Act.

Such affirmative action shall include that Respondent recognize and deal with the Union as the exclusive bargaining

representative of its employees in the appropriate unit by honoring the collective-bargaining agreement effective June 1, 1980, through May 31, 1983, in all its terms. Additionally, we have found that Respondent has made unilateral changes in certain terms and conditions of employment in violation of Section 8(a)(5) and (1) of the Act. In order to dissipate the effect of those unfair labor practices, we shall order Respondent to make whole its employees by paying the wage increases it has failed to pay since December 1, 1981, plus interest on said wage increases as prescribed in Florida Steel Corporation, 231 NLRB 651 (1977).<sup>2</sup>

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

### Conclusions of Law

- 1. Airport Drayage Co., a wholly-owned subsidiary of Airport Truck Repair, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
- 2. International Association of Machinists and Aerospace Workers, District Lodge No. 190, Local Lodge No. 1414, AFL--CIO, is a labor organization within the meaning of Section 2(5) of the Act.
- 3. All employees employed in the job classifications listed in the collective-bargaining agreement between the parties effective June 1, 1980, through May 31, 1983, excluding all other employees, guards and supervisors as defined in the Act,

See Ogle Protection Service, Inc., and James L. Ogle, 183 NLRB 682, 683 (1970); and see, generally, Isis Plumbing & Heating Co., 138 NLRB 716 (1962).

constitute a unit appropriate for the purposes of collectivebargaining within the meaning of Section 9(b) of the Act.

- 4. At all times material herein, the above-named labor organization has been and now is the exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.
- 5. By unilaterally failing and refusing since on or about December 1, 1981, to institute the wage increase scheduled for December 1, 1981, provided for in the parties' collective—bargaining agreement; and by on or about May 4, 1982, reaffirming its refusal to institute the December 1, 1981, wage increase, and repudiating its obligation to institute the wage increase scheduled for June 1, 1982, as provided for in the parties' colective—bargaining agreement, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Sections 8(a)(1) and (5) and 8(d) of the Act.
- 6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

### ORDER

Pursuant to Section 10(c) of the National Labor Relations

Act, as amended, the National Labor Relations Board hereby orders
that the Respondent, Airport Drayage Co., a wholly-owned
subsidiary of Airport Truck Repair, Inc., San Francisco,

California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

D--9551

(a) Refusing to bargain collectively with the Union as the exclusive bargaining representative of its employees in the following appropriate unit:

All employees employed in the job classifications listed in the parties' collective-bargaining agreement effective June 1, 1980 through May 31, 1983, excluding all other employees, guards and supervisors as defined in the Act.

- (b) Failing and refusing to pay wage increases as required by its collective-bargaining agreement with the Union.
- (c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.
- 2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:
- (a) Recognize and bargain with the Union as the exclusive representative of its employees in the aforesaid appropriate unit and honor the collective-bargaining agreement effective June 1, 1980 through May 31, 1983, in all its terms.
- (b) Make whole its employees, in the manner set forth in the section of this Decision entitled ''The Remedy,'' by paying to employees any wage increases it has failed to pay since December 1, 1981, as required by its collective-bargaining agreement with the Union, plus interest.
- (c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

- (d) Post at its San Francisco, California, place of business copies of the attached notice marked ''Appendix.''<sup>3</sup>
  Copies of said notice, on forms provided by the Regional Director for Region 20, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.
  - (e) Notify the Regional Director for Region 20, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

Dated, Washington, D.C. December 10, 1982

John R. Van de Water, Chairman

John H. Fanning, Member

Don A. Zimmerman, Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading ''POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'' shall read ''POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.''

#### APPENDIX

### NOTICE TO EMPLOYEES

Posted by Order of the National Labor Relations Board An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with International Association of Machinists and Aerospace Workers, District Lodge No. 190, Local Lodge No. 1414, AFL--CIO, as the exclusive representative of our employees in the following bargaining unit:

All employees employed in the job classifications listed in our collective-bargaining agreement effective June 1, 1980 through May 31, 1983, excluding all other employees, guards and supervisors as defined in the Act.

WE WILL NOT unilaterally change existing terms and conditions of employment of our employees in the bargaining unit described above by failing to pay wage increases as required by our collective-bargaining agreement with the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL recognize and deal with the Union as the exclusive representative of our employees in the above-described unit and honor the collective-bargaining agreement effective June 1, 1980, in all its terms.

WE WILL make whole our employees by paying our employees any wage increases that we have failed to pay since December 1, 1981, plus interest, as required by our collective-bargaining agreement with the Union.

-	WHOLLY-	DRAYAGE CO., A OWNED SUBSIDIARY OF TRUCK REPAIR, INC.
. · ·		(Employer)
Dated By	(Representative)	(Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Federal Building, Room 13018, 450 Golden Gate Avenue, San Francisco, California 94102, Telephone 415--556--0335.